

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

7 UNITED STATES OF AMERICA,)
8 Plaintiff,) No. CV-72-3643-JLQ
9 SPOKANE TRIBE OF INDIANS,) REPORT AND RECOMMENDATION TO
10 Plaintiff/Intervenor,) AUTHORIZE WATER MASTER TO
11 v.) SHUT OFF WATER UNTIL \$695.46
12 BARBARA J. ANDERSON, JAMES R.) IN DELINQUENT FEES ARE PAID
13 NEWHOUSE, et al.,)
14 Defendants.)
----- ACTION REQUIRED -----

16 At the April 26, 2006, hearing before the Special Master for the
17 presentation of the Water Master's 2005 Report (covering October 1,
18 2004, through September 30, 2005), Water Master James Lyerla
19 appeared, as did Attorney Shannon Work for the Spokane Tribe of
20 Indians, Washington State Assistant Attorney General Sharonne E.
21 O'Shea for the Washington State Department of Ecology, and Department
22 of Justice attorney David Harder for the United States. Also present
23 and addressing the court was Nick Pemberton, an adjudicated water
24 rights holder. The record reflects James R. Newhouse was served with
25 notice of the hearing and did not appear. The matter is before the
26 undersigned following referral by Senior Judge Quackenbush. (Ct.
27 Rec. 571.)

1 In the September 12, 1979, Judgment in the captioned matter (Ct.
 2 Rec. 196, at 6), entered by the Honorable Marshall A. Neill, United
 3 States District Judge, directives for appointment of the Water Master
 4 were set forth. Pursuant to the Judgment, the Water Master,

5 [S]hall have the power to issue proper orders, rules and
 6 directions made in accordance with and for the enforcement
 7 of the Judgment, and in the event any such orders, rules or
 8 directions of the Water Master are disobeyed or
 9 disregarded, the Water Master shall be and he is hereby
 10 empowered and authorized to cut off the water of the owners
 11 or water users so disobeying or disregarding such proper
 12 orders, rules or directions. The Water Master shall
 13 promptly report to the Court said action and the
 14 circumstances leading thereto and connected therewith.

15 On August 23, 1982, a Water Master was appointed (Ct. Rec. 252,
 16 Order of the Honorable Justin L. Quackenbush, United States District
 17 Judge), and the current Water Master, James M. Lyerla, was appointed
 18 on May 11, 2001 (Ct. Rec. 483, Order of the Honorable Justin L.
 19 Quackenbush, United States District Judge). This ruling was not
 20 disturbed by the appellate court. *United States and Spokane Tribe of
 21 Indians v. Anderson*, 736 F.2d 1358, 1361 (9th Cir. 1984).

22 The court, both through the original litigation and order of
 23 adjudication, as well as the annual hearings to review the Water
 24 Master's Reports, has required that water right holders pay their
 25 proportionate share of the Water Master's annual compensation. See,
 26 for example, Orders of March 31, 2004, at 3 (Ct. Rec. 534); Order of
 27 May 28, 2003, at 2 (Ct. Rec. 524); and Order of May 6, 2002, at 2
 28 (Ct. Rec. 499). Pursuant to this court's directive following the
 April 26 hearing, Water Master Lyerla informed the court Mr. James
 Newhouse is delinquent as of December 1, 2005, and remains delinquent
 with respect to the Water Master's fees billed to Mr. Newhouse's 190-

1 acre tract currently in a conservation reserve program. See 2005
2 Annual Report, at 5. Those delinquent fees total \$695.46, from the
3 1st quarter of 2003 through the 4th quarter of 2004 and remain
4 delinquent through the 4th quarter of 2005 (ending September 30,
5 2005). (Ct. Rec. 582, Lyerla Decl. at 2.) The court previously
6 advised Mr. Newhouse that fees are due and owing whether or not the
7 water is used. (Ct. Rec. 583 at 3.)

8 The Water Master's itemization of delinquent charges totaling
9 \$1,047.14 includes the past-due charges of \$351.68 for the four
10 quarters of 2005 (covering October 1, 2004, through September 30,
11 2005). Those charges, while tardy, and properly billed under the
12 compensation agreement and the Order approving the Water Master's
13 2004 Annual Report (Ct. Rec. 560 at 2), are not included in this
14 Report and Recommendation. The reason is the 2005 Report has not
15 been approved yet by Senior Judge Quackenbush.¹ See the undersigned's
16 Report and Recommendation to approve the 2005 Annual Report, filed
17 May 9, 2006; the past-due \$351.68 separately was addressed in that
18 Report and Recommendation to approve the 2005 Annual Report (Ct. Rec.

¹At the April 26, 2006, hearing for the presentation of the Water Master's 2005 Report (covering October 1, 2004, through September 30, 2005), the court inquired as to the time line for the quarterly payments. Mr. Lyerla responded, "generally I require it be paid by the end of December of that year. And I don't require quarterly payments, I allow people to pay at the end of the year, rather than . . . sending four individual checks, which people tend to like." The \$351.68 thus became in arrears as of December 31, 2005.

1 | 588).

2 In addition to cutting off water, Mr. Newhouse was advised a
3 failure to respond to the Special Master's Order to Show Cause could
4 result in additional legal proceedings, including, at the Water
5 Master's discretion, the filing of a separate civil action to collect
6 the debt owed with attendant costs and lien proceedings, pursuant to
7 RCW 4.56.200.² Mr. Newhouse was directed to show cause on or before
8 May 23, 2006, by written filing, why his water supply should not be
9 cut-off until compensation is received under paragraph XIII of the
10 court's Judgment dated September 12, 1979. (Ct. Rec. 196 at 6.)
11 There has been no response to the Order to Show Cause. Accordingly,

12 **IT IS RECOMMENDED** that following the ten-day objection period to
13 this Report and Recommendation, the Water Master immediately be
14 authorized to cut off water for the parcels in arrears until the
15 \$695.46 compensation is current.

OBJECTIONS

17 Any party may object to a magistrate judge's proposed findings,
18 recommendations or report within ten (10) days following service with
19 a copy thereof. Such party shall file with the District Court

²Mr. Newhouse also was advised he could file a Certificate of Relinquishment, instructing the Water Master of his intent to relinquish his water rights to the 190 acres. The Water Master then would forward the request to the undersigned and the State Department of Ecology for processing, as described in the court's Order dated September 3, 2002. (Ct. Rec. 513.)

1 Executive and serve on all parties written objections, specifically
2 identifying the portions to which objection is being made, and the
3 basis therefor. Any response to the objection shall be filed within
4 ten (10) days after receipt of the objection. Attention is directed
5 to FED. R. CIV. P. 6(e), which adds another three (3) days from the
6 date of mailing if service is by mail.

7 A district judge will make a de novo determination of those
8 portions to which objection is made and may accept, reject, or modify
9 the magistrate judge's determination. The judge need not conduct a
10 new hearing or hear arguments and may consider the magistrate judge's
11 record and make an independent determination thereon. The judge may
12 also receive further evidence or recommit the matter to the
13 magistrate judge with instructions. See 28 U.S.C. § 636(b)(1)(B) and
14 (C), FED. R. CIV. P. 73, and LMR 4, Local Rules for the Eastern
15 District of Washington.

16 A magistrate judge's recommendation cannot be appealed to a
17 court of appeals; only the district judge's order or judgment can be
18 appealed.

19 The Clerk of the Court shall file this Report and Recommendation
20 and serve copies of it on Senior Judge Quackenbush, and those parties
21 listed on the Notice List attached to this Report and Recommendation.

22 DATED May 30, 2006.

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S/ CYNTHIA IMBROGNO
25 UNITED STATES MAGISTRATE JUDGE
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